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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-fifth session

Summary record (partial)* of the 333rd meeting
Held at the Palais Wilson, Geneva, on Thursday, 1 September 2016, at 3 p.m.

Chair: Ms. Dzumhur (Vice-Chair)

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 3.20 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Second periodic report of Sri Lanka (CMW/C/LKA/2; CMW/C/LKA/QPR/2)

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*

2. **Mr. Aryasinha** (Sri Lanka), introducing the second periodic report of Sri Lanka (CMW/C/LKA/2), said that his Government had engaged in inclusive consultations with various stakeholders, including the Human Rights Commission of Sri Lanka, when preparing the report. He was pleased to announce that Sri Lanka had recently withdrawn its reservation to article 29 of the Convention, to which it had acceded 20 years earlier. His Government joined the Committee in calling on States that had not yet done so to consider becoming parties to the Convention.

3. Following the standing invitation extended in December 2015 to all thematic special procedures mandate holders, a number of Special Rapporteurs had already undertaken visits to Sri Lanka, including the Special Rapporteur on the human rights of migrants, with whom the Government had jointly hosted a workshop on recruitment practices. His Government had taken a policy decision to resume its practice of cooperating with the Human Rights Committee by responding to new communications from that Committee and by providing written explanations or statements clarifying the matters referred to in the communications and the remedies taken, if any. Sri Lanka had recently reported, or would soon report, to several other human rights treaty bodies, and it had also recently become a party to a number of international human rights and labour-related instruments, including the International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122). Those measures demonstrated his Government's will to cooperate with international organizations and mechanisms.

4. Outbound migration was not a new phenomenon in Sri Lanka. From the 1950s to the 1970s there had been a so-called brain drain as professionals migrated to developed countries. The internal armed conflict had prompted another wave of migration, including labour migration. Sri Lanka had largely remained a sending country for migrant labour. Current labour migration was mostly to member States of the Gulf Cooperation Council. Lack of employment opportunities in Sri Lanka continued to cause many women to seek employment as domestic workers in those States, although recent government initiatives had somewhat helped to reduce the number of women who were dependent on such work. Remittances from migrant labourers contributed significantly to the country's economy.

5. Over the years, Sri Lanka had put in place the necessary legal, institutional and socioeconomic safeguards to address issues related to migration. Those safeguards were contained in, inter alia, the Constitution, the Right to Information Act, and the national immigration and emigration legislation. Media freedom had been restored, and all local and foreign journalists were free to travel anywhere in the country without restriction. The National Human Rights Commission had been empowered with a broad mandate to guarantee fundamental human rights, including those of migrants, and had set up a focal point on migrant issues.

6. The democratic space for the private sector and civil society to engage with the State had broadened since 2015. Consultations with civil society had played an important role in shaping the Government's ongoing reform agenda. The Bureau of Foreign Employment worked in cooperation with civil society organizations to address issues related to migrant workers and their families.

7. **Mr. Witanage** (Sri Lanka) said that his Government had undertaken several measures to bring national legislation into line with the Convention. A new piece of legislation, the Employment Migration Authority Act, would replace the Sri Lanka Bureau of Foreign Employment Act and provide a more overarching role for the Bureau in various sectors. Civil society and other stakeholders would have the opportunity to comment on the new draft legislation before it was submitted to Parliament. The Bureau operated a local Workers' Welfare Fund and an overseas Workers' Welfare Fund. The Government made every effort to protect the rights and provide for the welfare of migrant workers prior to their departure, during their employment period and upon their return. It offered, inter alia, educational scholarships for children of migrant workers, vocational training scholarships for school leavers, and low-interest loan facilities for housing. In 2015, a total of 3,351 scholarships had been awarded. During their period of employment abroad, Sri Lankan migrant workers were covered by an insurance scheme offered by the Foreign Employment Bureau.

8. Under a migrant protection programme known as *Shramika Surekuma*, the Government would establish a comprehensive database on migrant workers and their protection needs. The *Sahana Piyasa* migrant assistance centre, located near the international airport, provided assistance to returning migrant workers. The Government had pledged to introduce a pension scheme for those employed overseas and to start a special protection programme for the families of migrant workers. The National Migration Health Policy had been launched in 2012 in recognition of the right to health of both inbound and outbound migrants and their family members. Sri Lanka would soon host the second Global Consultation on Migrant Health.

9. The Ministry of Foreign Employment had established mechanisms for monitoring and reporting back on the implementation of the National Labour Migration Policy. Implementation was monitored and evaluated by the National Advisory Committee on Labour Migration, which met every three months and comprised all key stakeholders, including government institutions, non-governmental organizations (NGOs) and the private sector. The Ministry of Foreign Employment worked with a number of civil society partners to implement the National Labour Migration Policy, including through training for migration officials and awareness-raising programmes for migrant workers and their families.

10. In 2013, the Ministry of Foreign Employment had issued a circular setting restrictions on mothers with children under 5 years of age who wished to take up employment overseas. A family background report was requested from mothers who sought approval to migrate. That practice was currently being re-examined by the Cabinet of Ministers, however.

11. **Mr. Wijeratne** (Sri Lanka) said that the Government had committed to adopting a national human rights action plan for the period 2017 to 2021. An interministerial committee had been tasked with drafting the action plan and would be assisted by drafting committees working on various thematic areas. The drafting committee on the rights of migrant workers would cover a range of issues relevant to the Convention. The matter was also being discussed by the National Advisory Committee on Labour Migration. His Government would be in a better position to consider recognizing the Committee's competence to consider communications, as provided under articles 76 and 77 of the Convention, once a sufficient number of labour-receiving countries had become parties to the Convention, which he hoped would happen in the very near future.

12. Sri Lanka had taken a number of measures to protect the rights of its nationals outside the country through its extensive consular services network. The Consular Affairs Division of the Ministry of Foreign Affairs assisted Sri Lankan migrant workers abroad with matters relating, inter alia, to compensation and working conditions; registration of

births, marriages and deaths; authentication of documents; and repatriation. In order to ensure better working conditions for Sri Lankan migrant workers, Sri Lanka had entered into bilateral agreements with a number of countries, including several member States of the Gulf Cooperation Council. The lack of labour laws covering domestic workers in some destination countries, however, made it difficult to prevent the abuse and exploitation of those vulnerable workers. Intensified advocacy efforts and campaigns by the international community and civil society to encourage destination countries to take protective legal and administrative measures to protect domestic workers' rights would help to address the issue. The Kuwait Trade Union Federation had called for an end to the *kafala* system and for the enactment of legislation regulating workers' rights in the private sector. Some Gulf and Asian countries had agreed that they should improve labour law protection, reform immigration policies and increase dialogue with trade unions and non-governmental groups.

13. **Ms. Jayasuriya** (Sri Lanka) said that Sri Lanka was working in partnership with other Asian labour-sending countries through the Colombo Process, a voluntary regional consultation mechanism launched in 2003. Under the chairmanship of Sri Lanka, a road map had been developed in five areas of mutual interest to the member countries, namely: the development of qualification recognition processes, ethical labour recruitment practices, pre-departure orientation and empowerment, transfer of remittances, and tracking of labour market trends. The results had generated considerable interest among labour-receiving countries at forums such as the Abu Dhabi Dialogue, and had led to the emergence of several initiatives, such as a pilot skills certification programme and the development of training guides for pre-departure orientation. In the area of remittances, the Colombo Process would work towards the achievement of the Sustainable Development Goal 10 target of reducing transaction costs to 3 per cent or less and would promote financial education for migrant workers and their families. Sri Lanka had been invited to chair the Abu Dhabi Dialogue and in that capacity would continue working to improve the lives of Asian migrant workers.

14. Although traditionally a labour-sending country, Sri Lanka was now experiencing modest inward migration. It was not a party to the Convention relating to the Status of Refugees, but was working with the Office of the United Nations High Commissioner for Refugees to ensure the welfare of those migrants. The Government had decided not to repatriate asylum seekers and refugees, although it would apply domestic immigration laws to those who infringed them.

15. **Ms. Ladjel** (Country Rapporteur) said that the Committee would welcome information on the steps taken to disseminate the Committee's concluding observations on the State party's initial report (CMW/C/LKA/CO/1) and on the stakeholders that had been involved in drafting its second report. She would also like more information on the National Anti-Human Trafficking Task Force established in 2010 to combat trafficking in persons, including its main areas of activity and the outcomes of its work. Further details regarding the impact of the National Action Plan for the Protection and Promotion of Human Rights 2011-2016 and its impact would also be appreciated.

16. She wondered if the delegation could provide statistics on the number of Sri Lankans working abroad and the number of foreign nationals working in Sri Lanka, disaggregated by sex and by area of activity. She would be interested in hearing the delegation's assessment of the effectiveness of the mechanisms for lodging complaints against employment agencies that broke the law or acted in a manner that restricted migrant workers' rights. She would also like to hear about any plans to establish additional complaints mechanisms.

17. Recalling the case of Rizana Nafeek, who at the age of 16 had used false papers to obtain work in Saudi Arabia and had paid a heavy price, she asked what steps the State party had taken to prevent document falsification. She would welcome figures on the

number, status and qualifications of female migrant workers, along with information on women in situations of vulnerability, women who had been detained and women who had lost their lives while abroad. She would also like information on whether women migrants whose rights had been violated had obtained redress. Lastly, she asked whether the State planned to carry out any research on the living conditions of migrant women and their families and whether mechanisms were in place to protect children whose parents had migrated. For example, did Sri Lanka have a national children's code or a national strategy for the protection of children?

18. **Mr. Brillantes** (Country Rapporteur) said that he would be interested to learn about the actions that Sri Lanka had taken in response to the report of the Special Rapporteur on the human rights of migrants (A/HRC/29/36/Add.1), which had contained both positive and critical findings. He wished to know, in particular, whether the State party had implemented the Special Rapporteur's recommendations in relation to the banning of recruitment fees in accordance with the ILO Private Employment Agencies Convention, 1997 (No. 181), the employment of female officers by diplomatic missions to deal with cases of sexual abuse, the effective reintegration of returning migrants, and the performance of independent autopsies on the remains of migrants who died abroad.

19. He concurred with the Special Rapporteur's view that, by ratifying the ILO Domestic Workers' Convention, 2011 (No. 189), Sri Lanka would be in a better position to negotiate for the protection of its workers abroad and would welcome information on any progress made in that direction. He would also like to know whether the State intended to ratify the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). He wondered whether the State party had taken any steps to decriminalize irregular departures and classify irregular migration as an administrative offence, as recommended by the Special Rapporteur. He would also like to hear the delegation's reaction to the Special Rapporteur's observation that there was no law protecting the fundamental rights of migrants in Sri Lanka.

20. Information on how the State party had responded to the Committee's previous concluding observations would be appreciated. In particular, he wished to know to what extent the Committee's recommendations had been implemented. The delegation had stated that the National Human Rights Commission had been consulted in the preparation of the State party's second periodic report; however, the Committee had been advised that that was not the case. Could the delegation provide clarification in that regard?

21. The wealth of information that the Committee had received from United Nations institutions and from civil society organizations was a testament to the prominent role of Sri Lanka in the protection of migrant workers and members of their families. However, many of the reports received had raised concerns over the family background report, which had been criticized for restricting women's rights. The Committee would appreciate further comment from the delegation in that regard. It would also be grateful if the delegation would respond to the assertion by certain civil society organizations that the second periodic report was lacking in information on foreign workers in Sri Lanka. Lastly, the Committee would be grateful for clarification of whether Sri Lanka had taken any steps towards making the declarations provided for under articles 76 and 77 of the Convention.

22. **Mr. Ceriani Cernadas** said that the Committee had been informed that some members of the Board of Directors of the Sri Lanka Foreign Employment Agency also worked for recruitment agencies, which could give rise to conflicts of interest with regard to monitoring and supervision of the activities of such agencies. Given the large number of Sri Lankan women working abroad, it was surprising that the Board should only have one woman member. Furthermore, there were no representatives of trade unions or of organizations of Sri Lankan migrant workers sitting on the Board. The Committee had also

been informed that the current Sri Lankan ambassador to Saudi Arabia had been linked to private recruitment agencies, which might raise some concerns, given the importance of Saudi Arabia as a destination country for Sri Lankan workers. He wondered whether that had been taken into account in the vetting process carried out prior to the ambassador's appointment.

23. He asked whether there was any data to indicate that recent restrictions on the legal emigration of mothers with young children might have led to a rise in irregular emigration within that population group. He would also like to know whether the Immigrants and Emigrants Act had been aligned with articles 16 and 17 of the Convention and amended to include alternatives to deprivation of liberty in cases relating to migration status. Information on the circumstances which, in the eyes of the competent national authority, justified deprivation of liberty and on allegations that children of foreign migrants and their families had been deprived of their liberty would be welcome. He requested details on the periods of time for which migrant families involved in migration proceedings were detained and the grounds for such detention and asked whether it was true that there had been cases in which children of migrants had been held in detention with their parents for up to two years, as stated in the report of the Special Rapporteur on the human rights of migrants.

24. It would be interesting to know whether, within the framework of the Abu Dhabi Dialogue, the Colombo Process, or any other regional forum, proposals had been put forward for a common approach to the integration into domestic legislation of the provisions of the Convention and of other international instruments, such as the Convention on the Rights of the Child. Information on the application of the legislation criminalizing irregular migration would also be welcome. The Committee had received reports indicating that Sri Lankan nationals returned from Australia and other countries had been handed over to the Sri Lankan police. He would like to know whether those reports were true. He would also like to know whether a bilateral agreement had been signed with Australia safeguarding the rights of Sri Lankan migrant workers and their families in accordance with the Convention and ensuring that they enjoyed consular assistance, protection from arbitrary expulsion, due process as a part of migration proceedings and the right to seek asylum.

25. He would appreciate information on whether an official mechanism had been put in place allowing for consultation and dialogue with organizations of migrants, both in Sri Lanka and in countries of destination, in relation to migration policy. He also invited the delegation to comment on allegations that requests for Sri Lankan visas from members of organizations for the protection of migrants' rights had been refused and that they had been placed on a watch list. Lastly, he wondered whether any initiatives had been launched to safeguard the voting rights of Sri Lankan nationals resident abroad.

26. **Mr. Tall** said that it would be useful to have more information on the results of the implementation of the National Policy on Labour Migration, on any obstacles encountered in that regard and on any instances in which the Convention had been invoked before the domestic courts or administrative bodies. The Committee would welcome specific examples of how the State party met the obligations arising from the Convention. He therefore invited the delegation to describe the actions taken by the Government to assist migrant workers and to explain how domestic legislation was implemented in keeping with the provisions of the Convention. He would also like to hear what had been done to protect the rights of children of foreign migrants in Sri Lanka with regard to civil registration, education and basic health care.

27. He would like to know what practical measures the State party had taken to ensure that Sri Lankan migrant workers and members of their families resident in Qatar enjoyed their fundamental rights, including their right to due process, a fair trial and proper access to a judge. It would also be useful to know how the State informed its nationals of the

consular services available to them, including assistance in cases of expulsion, detention or non-payment of wages; of their rights under the Convention; and of their rights and obligations in their country of destination. He would appreciate further information, as well, on how the State dealt with irregular emigration. Information on measures taken to facilitate the transfer of wages by migrant workers and on any taxes imposed on such transfers would also be welcome.

28. **Mr. El-Boral**, noting with appreciation that Sri Lanka had participated in the preparation of the Convention and fulfilled its reporting obligations in a timely manner, said that he would like further information on the situation of Sri Lankan migrant workers resident in the Arab Gulf States. In particular, he wondered whether they had been affected by falling oil prices. He would also like to know whether any discussions on the *kafeel* (sponsor) system, wage equality between workers from different countries and family reunification were taking place in the context of the Abu Dhabi Dialogue.

29. **Mr. El Jamri** asked whether the labour-sending countries participating in the Abu Dhabi Dialogue and the Colombo Process had held any prior consultations in order to establish a common approach to the various problems affecting migrant workers and whether those regional forums had yielded any major progress on issues such as the *kafeel* system. Migrant workers in some destination countries were subjected to what amounted to a form of apartheid, in which they were denied entry to shopping centres and public parks, for example. He wondered whether the labour-sending countries had raised that issue with labour-receiving countries. He would also like to know whether the discussions held within the framework of the Dialogue and the Process had covered migrant workers not nationals of the countries represented at those events, whether migrant workers had been informed of the commitments relating to their rights made as a part of the Abu Dhabi Dialogue and whether a follow-up mechanism had been set up to monitor developments in relation to the matters discussed. Lastly, he asked whether the State party had established any links with trade union organizations as a part of its efforts to protect Sri Lankan workers residing abroad.

30. **Mr. Ünver** asked what measures had been taken by State and civil society bodies to rebuild links with Sri Lankans who had left the country during the internal conflict and to encourage their participation in national political life.

The meeting was suspended at 5 p.m. and resumed at 5.25 p.m.

31. **Mr. Wijeratne** (Sri Lanka) said that, in advance of the preparation of the report, a meeting had been held at the Ministry of Foreign Affairs to which representatives of the National Human Rights Commission of Sri Lanka had been invited, as had representatives of the Ministry of Foreign Employment, the Sri Lanka Bureau of Foreign Employment, the Ministry of Justice, the Ministry of Women and Child Affairs, the National Child Protection Authority and the Department of Immigration and Emigration. Reports that the National Human Rights Commission had not been invited to participate in the meeting were inaccurate.

32. The National Anti-Human Trafficking Task Force, which involved various ministries, had developed a plan for the period from 2015 to 2019 to monitor and combat human trafficking in Sri Lanka. The Task Force, with technical assistance from the International Organization for Migration, had developed a standard operating procedure to improve the identification and protection of victims of human trafficking and had established a government shelter, with fully trained staff, for female victims of trafficking. Procuration for sexual exploitation had been incorporated into the definition of human trafficking in the Penal Code. Persons convicted of the offence of procuration were sentenced to imprisonment for 2 to 10 years.

33. Mechanisms had been put in place to distinguish simple employment disputes from cases of trafficking in migrant workers. The Bureau of Foreign Employment was responsible for handling complaints submitted by migrant workers and, if there was reason to believe that the events described in a particular complaint amounted to trafficking, the matter was immediately referred to the appropriate authorities. The Government had used that mechanism to take legal action against Sri Lankans involved in the Rizana Nafeek case. The Bureau of Foreign Employment had established an internal unit to combat human trafficking. By March 2017, the National Anti-Human Trafficking Task Force was expected to have taken steps, inter alia, to improve the investigation and prosecution of suspected traffickers and the conviction and punishment of offenders, train officials on victim identification and referral procedures, ensure that victims received specialized care services, promote safe and legal migration, raise awareness of human trafficking, take action against officials complicit in human trafficking and complete legal proceedings with regard to pending cases involving recruitment agencies.

34. The Government had entered into readmission agreements with a number of European Union member countries and, with the support of bilateral partners and the International Organization for Migration, was implementing assisted voluntary return and reintegration programmes. Those programmes played an important role in the provision of assistance to vulnerable Sri Lankan migrants and their families wishing to return to Sri Lanka. A coordinating committee on readmission had been established to negotiate readmission agreements between Sri Lanka and other countries, oversee the implementation of existing readmission agreements and function as the focal point for all issues related to readmission.

35. The Government had made a voluntary commitment to introduce a national human rights action plan covering the period from 2017 to 2021. The possibility of ratifying the ILO Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Domestic Workers Convention, 2011 (No. 189), would be considered in that context. The provisions of the Convention had been integrated into various domestic laws, and consideration was also being given to enacting legislation that would give legal effect to the Convention as a whole.

36. With regard to reports that the bodies of Sri Lankan migrants who had died abroad were sometimes found to have been mutilated, he explained that organs were sometimes removed from dead bodies in the course of an autopsy, which was required by law in some countries. The Government had investigated allegations of organ harvesting from migrant workers and found them to be baseless. On the question raised by Mr. Ceriani Cernadas regarding denial of visas, the individual in question, who had intended to participate in a meeting of the Colombo Process, had failed to apply for a visa in time.

37. **Mr. Wanasekara** (Sri Lanka) said that migrants could file complaints against individuals and recruitment agents at the offices of the Bureau of Foreign Employment in Sri Lanka and at Sri Lankan missions in destination countries. Complaints were handled via an online complaint management system. Pursuant to the Bureau of Foreign Employment Act, No. 21 of 1985, the Bureau of Foreign Employment had the power to summon the parties concerned, conduct inquiries and grant redress as appropriate. It had a special division to deal with foreign employment disputes and also operated a call centre that received complaints. The Bureau of Foreign Employment (Amendment) Act, No. 56, adopted in 2009, had empowered the Bureau to take action against persons who falsified documents. Sri Lankan diplomatic staff members were often able to mediate disputes involving Sri Lankan migrant workers in other countries. In some countries, however, they were not allowed to deal directly with employers; in such cases, the matter had to be referred to the labour authorities of the country in question.

38. In 2007 the Cabinet of Ministers had decided to bar Sri Lankan mothers with children under the age of 5 years from migrating in search of work. To give effect to that decision, the Bureau of Foreign Employment had made it a requirement for a family background report to be drawn up on all women who applied for permission to leave the country. A mother would be refused permission to leave the country if her absence was deemed likely to place her children at risk. The Cabinet of Ministers was currently reviewing that practice. He emphasized that the Government's intention was not to restrict the rights of women, but rather to protect the rights of children.

39. The cost of recruitment for migrant workers had been considered in the framework of the Colombo Process. Under the Bureau of Foreign Employment (Amendment) Act of 2009, licensed recruitment agencies were permitted to charge a fee for actual costs incurred in the recruitment process. The Bureau of Foreign Employment determined the amount that could be charged in each case. The Bureau provided comprehensive training on recruitment practices for all newly licenced recruitment agents and could take action against those who violated the law.

40. A policy and an action plan on return and reintegration had been drawn up with technical assistance from ILO with the aim of addressing the economic, social and psychosocial needs of returning migrant workers and their families. A special unit had been established within the Bureau of Foreign Employment to implement the plan.

41. The Board of Directors of the Bureau of Foreign Employment included two women. The Bureau of Foreign Employment Act determined the Board's composition. The process of amending the Act, currently under way, would afford an opportunity to provide for civil society representation on the Board.

The meeting rose at 5.55 p.m.